

IN THE SUPREME COURT OF THE STATE OF MONTANA

CAUSE NO. 01-768

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THE STATE OF MONTANA, ex rel.  
MICHAEL S. SMARTT

Petitioner/Relator/Appellant,.

v.

JUDICIAL STANDARDS COMMISSION  
AND ITS MEMBERS, Hon. JOHN WARNER,  
Chairman; VICTOR F. VALGENTI,  
BARBARA EVANS, PATTY JO HENTHORN,  
and Hon. ED McLEAN; and Staff,

Respondents.

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APPENDIX TO BRIEF OF RESPONDENTS

---

Channing J. Hartelius  
Michael S. Smartt  
HARTELIUS, FERGUSON,  
BAKER & KAZDA  
600 Central Avenue  
Suite 401  
Great Falls, MT 59401  
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Attorneys for Respondents

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AFFIDAVIT OF HON. SAMUEL L. HARRIS .....	EXHIBIT 3

1 Stanley T. Kaleczyc  
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5  
6 **MONTANA FIRST JUDICIAL DISTRICT COURT,**  
7 **LEWIS & CLARK COUNTY**  
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12 THE STATE OF MONTANA, ex )  
rel. MICHAEL S. SMARTT, )

Cause No. ADV 2001 458

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Petitioner and Relator, )  
v. )

**AFFIDAVIT OF  
HON. JOHN WARNER**

JUDICIAL STANDARDS )  
COMMISSION AND ITS MEMBERS, )  
HON. JOHN WARNER, Chairman; )  
VICTOR F. VALGENTI, BARBARA )  
EVANS, PATTY JO HENTHORN, )  
and HON. ED McLEAN; and )  
Staff, )

Respondents. )

---

I, John Warner, being duly deposed and sworn, state:

1. I am the presiding judge in the 12<sup>th</sup> Judicial District and  
one of the two judicial appointees to the Judicial Standards

1 Commission (the "Commission").

2 2. I have served on the Judicial Standards Commission since  
3 1993 and have been Chair of the Commission since 1999.

4 3. On or about October 23, 2000 the Commission received a  
5 written complaint from Cascade County Justice of the Peace Samuel  
6 L. Harris against Cascade County Justice of the Peace Michael S.  
7 Smartt.

8 4. On October 24, 2000 a copy of the complaint filed by  
9 Judge Harris was sent to Judge Smartt.

10 5. On November 13, 2000 the Commission received Judge  
11 Smartt's responses to the Harris complaint.

12 6. On November 21, 2000 the Commission instructed me  
13 pursuant to Rule 10 of the Commission's rules to pursue an informal  
14 resolution with Judge Smartt of the Harris complaint.

15 7. Sometime between November 21 and December 4 I became  
16 aware of the existence of a Montana Department of Justice Criminal  
17 Investigation Bureau (CIB) investigation of Judge Smartt. It was  
18 my belief that this investigation related to the Harris complaint.  
19 Therefore, I made application to the 1<sup>st</sup> Judicial District Court for  
20 release of the CIB investigation. By order authorizing release of  
21 criminal justice information, dated November 29, 2000, the  
22 Commission was granted access to the CIB file.

23 8. On December 4, 2000 the Commission received the CIB file.  
24 Upon my review of the file I learned that the matter under  
25 investigation was not the Harris complaint or matters related  
26 thereto. Rather, the CIB investigation concerned factual  
27 allegations of criminal conduct made against Judge Smartt by Mr.

1 Troy Dye.

2 9. By memo dated December 5, 2000 I advised the other  
3 Commission members of the general contents of the CIB investigation  
4 file and the allegations made by Mr. Dye against Judge Smartt.

5 10. In late December 2000 I arranged a meeting with Judge  
6 Smartt and his attorneys as contemplated by Rule 10 and as directed  
7 by the Commission.

8 11. By letter dated December 27, 2000 I both confirmed the  
9 meeting with Judge Smartt and his attorneys to be held in December  
10 30, 2000 and advised Judge Smartt of the allegations made by Mr.  
11 Dye.

12 12. On December 30, 2000 I met with Judge Smartt and his  
13 attorneys. The meeting was stenographically recorded.

14 13. By letter dated January 1, 2001 I sent to Judge Smartt a  
15 number of transcripts of interviews, including transcription of  
16 interviews with Mr. Dye which were held on October 19 and October  
17 26, 2000, all of which transcripts were part of the CIB file.

18 14. By letter dated January 9, 2001 the Commission received  
19 Judge Smartt's supplemental response to the Harris complaint.

20 15. On January 10, 2001, the Commission sent a transcript of  
21 the December 30, 2000 conference between Judge Smartt, his  
22 attorneys and me to Judge Smartt.

23 16. By letter dated January 11, 2001 Judge Smartt  
24 acknowledged receipt of the transcripts which I had sent to him on  
25 January 1. In his letter, he also requested additional time to  
26 reply to the allegations made by Mr. Dye.

27 17. By letter dated January 12, 2001 I agreed that Judge

1 Smartt could have additional time to respond to the Dye  
2 allegations.

3 18. By letter dated January 28, 2001 the Commission received  
4 Judge Smartt's response to the Dye allegations.

5 19. On February 8, 2001 the Commission decided to proceed  
6 with a formal complaint against Judge Smartt as provided by the  
7 Commission's rules.

8 20. Thereafter, the Commission retained Mr. Greg Gould of  
9 the firm of Luxan & Murfitt to file the formal complaint.

10 21. By letter dated May 10, 2001 Mr. Gould sent to Mr.  
11 Channing Hartelius, Judge Smartt's attorney, a draft of the formal  
12 complaint.

13 22. By letter dated May 15, 2001 Judge Smartt sent a letter  
14 to Mr. Gould advising him that Judge Smartt intended to resign as  
15 Justice of the Peace effective July 1, 2001. By letter dated that  
16 same day, Mr. Hartelius also informed Mr. Gould of the same.

17 23. By letter dated May 16, 2001 Judge Smartt advised the  
18 Cascade County Commissioners of his resignation effective July 1,  
19 2001.

20 24. By letter dated May 17, 2001 Mr. Gould informed Mr. Dye  
21 of Judge Smartt's resignation and that as a consequence there would  
22 be no hearing at which Mr. Dye would be required to appear.

23 25. By letter dated June 28, 2001 Judge Smartt advised the  
24 Cascade County Commissioners that he was reconsidering his  
25 resignation.

26 26. By letter dated July 2, 2001 to Judge Smartt, in response  
27 to a letter from Judge Smartt to Mr. Gould dated June 30, I advised

1 Judge Smartt that, if he chose to resign his judicial office, there  
2 would be no reason for the Commission to proceed with a formal  
3 complaint, but that if he retained his judicial office a formal  
4 complaint would be filed. Of Course, Judge Smartt had around May  
5 10, 2001 received a copy of the formal complaint through his  
6 counsel, and knew the contents thereof.

7 27. By letter dated July 2, 2001 Judge Smartt advised the  
8 Cascade County Commissioners that he was withdrawing his  
9 resignation.

10 28. By letter dated July 3, 2001 Mr. Gould advised the  
11 Commission that Judge Smartt had withdrawn his resignation.

12 29. On July 3, 2001 Mr. Gould filed a formal complaint  
13 against Judge Smartt, styled Harris and Dye v. Smartt, with the  
14 Clerk of the Supreme Court as provided by the Commission's rules.

15 30. On July 11, 2001 I conducted a scheduling conference with  
16 Mr. Gould and Mr. Hartelius at which time a hearing date was set  
17 and discovery was discussed and agreed to by the attorneys.

18 31. On July 13, 2001 I sent a scheduling order to counsel of  
19 record, Mr. Gould and Mr. Hartelius.

20 32. On July 13, 2001 I received a call from the staff of the  
21 Commission who informed me that Judge Smartt had advised them that  
22 he was coming to the Commission office to review his file. I  
23 instructed the staff that any request to review the file must be  
24 processed through the attorneys of record, as contemplated by the  
25 July 11 scheduling meeting and my July 13 scheduling order. I was  
26 also concerned that the file at the Commission office might contain  
27 privileged discussions of the Commission, or attorney work product

1 and thus Mr. Gould would first have to review the file, and so  
2 would the Commission. On July 25, 2001, I advised Judge Smartt by  
3 letter that requests for information were to be made to Mr. Gould.  
4 If he was not satisfied with Mr. Gould's response he could file a  
5 formal request for what he wanted in the office of the Clerk of the  
6 Supreme Court and such would be duly considered and ruled on by the  
7 Commission.

8 33. On July 25, 2001 I received from Judge Smartt a copy of  
9 the Writ of Prohibition signed by Judge McCarter. This was the  
10 first time that I knew that a Writ had been issued.

11 34. On July 31, 2001 the Commission received an unsolicited  
12 verified complaint from Judge Harris together with his cover letter  
13 dated July 27, 2001 in which Judge Harris stated that he believed  
14 he had previously sent a verified complaint in October 2000 and  
15 that he intended this verified complaint either to cure the alleged  
16 procedural defect of their apparently being no verified complain in  
17 the file or to deem this verified complaint as a new filing to  
18 initiate a new proceeding against Judge Smartt.

19 35. If the Court does not grant the Commission's request to  
20 cure the procedural defects alleged by Judge Smartt by obtaining a  
21 verified complaint from Mr. Dye and serving the verified complaints  
22 from Judge Harris and Mr. Dye on Judge Smartt and his counsel, as  
23 part of the ongoing proceedings, the Commission will have no choice  
24 but to obtain verified complaints and institute a new formal  
25 complaint against Judge Smartt in furtherance of the Commission's  
26 constitutional mandate to receive complaints, investigate  
27 complaints, and make findings and recommendations to the Supreme



1 Court concerning allegations of judicial misconduct and violations  
2 of the Canons of Judicial Ethics.

3 Further affiant saith not.  
4



  
John Warner

7 STATE OF MONTANA )  
8 : ss.  
9 County of Hill )

9 On this 6 day of August, 2001, before me, the undersigned, a  
10 Notary Public in and for the State of Montana, personally appeared  
11 known to me to be John Warner, the person whose name is subscribed  
12 to the foregoing instrument and acknowledged to me that he executed  
13 the same.

12 In witness whereof, I have hereunto set my hand and affixed my  
13 notarial seal on the day and year first above written.

14  
15 (Notarial Seal)

   
NOTARY PUBLIC FOR THE STATE OF MONTANA

Residing at: Helen MT

My commission expires: 8-15-2004

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7 (406) 443-6820

LISA KALLIO

8 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS & CLARK COUNTY

9	THE STATE OF MONTANA, <i>ex rel.</i>	)	
10	MICHAEL S. SMARTT,	)	Cause No. ADV 2001 458
11	Petitioner and Relator,	)	
12	v.	)	AFFIDAVIT OF
13		)	GREGORY G. GOULD
14	JUDICIAL STANDARDS	)	
15	COMMISSION AND ITS MEMBERS,	)	
16	HON. JOHN WARNER, Chairman;	)	
17	VICTOR F. VALGENTI, BARBARA	)	
18	EVANS, PATTY JO HENTHORN, and	)	
19	HON. ED McLEAN; and Staff,	)	
20	Respondents.	)	

21 STATE OF MONTANA )  
22 : ss.  
23 County of Lewis and Clark)

24 I, Gregory G. Gould, being first duly sworn upon oath, depose  
25 and say:

26 1. I am the special counsel appointed by the Judicial  
27 Standards Commission to prosecute a formal complaint against Cascade  
28 County Justice of the Peace Michael S. Smartt before the Judicial  
Standards Commission. I have personal knowledge of the matters

1 stated in this affidavit.

2       2. On or about February 7, 2001, I was retained by the  
3 Judicial Standards Commission (the "Commission") pursuant to Rule  
4 4(c), Rules of the Judicial Standards Commission (R.J.S.C.), to  
5 prepare and prosecute a formal complaint against Judge Smartt  
6 concerning the complaints by Hon. Samuel L. Harris ("Judge Harris")  
7 and Troy Nelson Dye ("Dye").

8       3. At the time I was retained by the Judicial Standards  
9 Commission, I was provided with a copy of the Commission's February  
10 7, 2001, Order to File Formal Complaint, indicating that the  
11 Commission had decided to direct that a formal complaint be filed to  
12 hear the complaints.

13       4. The materials provided by the Commission included, but  
14 were not limited to, a detailed written complaint filed with the  
15 Commission by Judge Harris.

16       5. The materials provided by the Commission also included,  
17 but were not limited to, the investigative file prepared by the  
18 Criminal Investigation Bureau ("CIB") of the Department of Justice.  
19 The investigative file of the CIB included transcripts of detailed  
20 interviews of Troy Nelson Dye, along with transcripts of interviews  
21 of other witnesses.

22       6. At the time I was retained, the Chairman of the  
23 Commission, Hon. John Warner, advised me that the Department of  
24 Justice contacted Mr. Dye in December 2000 and Mr. Dye affirmed that  
25 he wished to pursue a complaint against Judge Smartt before the  
26 Commission.

27       7. Prior to filing a formal complaint, I sought to assure  
28 myself as the prosecutor that Harris and Dye were sincere in their

1 allegations and that the complainants were willing and prepared to  
2 testify to their allegations under oath at a formal, public hearing.  
3 In addition, I sought to assure myself as the prosecutor that there  
4 was substance to the allegations of the complainants.

5 8. In addition to careful review and analysis of the  
6 documentary evidence, I interviewed both Complainants and other  
7 individuals prior to filing a formal complaint. Both Judge Harris  
8 and Mr. Dye adamantly stood behind their allegations, and indicated  
9 that they would cooperate with the Commission, including testifying  
10 at a formal hearing on the complaint and providing any additional  
11 information or evidence requested.

12 9. Judge Smartt was also provided with ample opportunity to  
13 review and respond to the complaints and allegations against him.  
14 The records provided to me indicated that a copy of Judge Harris's  
15 complaint was provided to Judge Smartt on October 24, 2000. The  
16 materials provided to me by the Commission included Judge Smartt's  
17 November 14, 2000, 13-page response to Judge Harris's Complaint,  
18 Judge Smartt's January 9, 2001, Supplemental Answer to Judge  
19 Harris's Complaint, and Judge Smartt's November 10, 2000, unverified  
20 18-page complaint against Judge Harris alleging that Judge Harris  
21 had improperly accessed Judge Smartt's computer.

22 10. In addition, at the behest of the Commission, Warner met  
23 with Judge Smartt and his counsel on December 30, 2000, regarding  
24 the allegations by Mr. Dye. Prior to that meeting, Chairman Warner  
25 provided Judge Smartt with a description of Mr. Dye's allegations.  
26 Following the meeting, Chairman Warner provided Judge Smartt with  
27 copies of all the interview transcripts from the CIB investigative  
28 file, including verbatim transcripts of two interviews of Mr. Dye.

1 11. In addition to the December 30, 2000, meeting with Judge  
2 Warner, the Commission provided Judge Smartt with the opportunity to  
3 respond in writing to the Dye allegations. Judge Smartt  
4 subsequently submitted to the Commission his January 28, 2001,  
5 response to the allegations of Mr. Dye. In his response, Judge  
6 Smartt denied any allegations of wrongdoing, but did not  
7 specifically describe what had in fact occurred on the occasion in  
8 question.

9 12. Based upon my interviews and review of the evidence,  
10 including all of the materials described above, I concluded that  
11 there was sufficient basis to proceed with the filing of a formal  
12 complaint. I prepared a formal complaint against Judge Smartt for  
13 filing in the Office of the Clerk of the Supreme Court pursuant to  
14 Rule 11(a), R.J.S.C.

15 13. Prior to filing the Formal Complaint, I wrote a letter to  
16 Judge Smartt's attorney, Channing J. Hartelius, dated May 10, 2001,  
17 providing him with a copy of the Commission's Order to File Formal  
18 Complaint and a copy of the draft Complaint, and advising him that I  
19 was prepared to file the Formal Complaint. I further advised him  
20 that under the Commission's rules, the Complaint and all further  
21 proceedings become a matter of public record upon filing, but that  
22 the Commission's rules provide that if a judge voluntarily resigns  
23 prior to the institution of formal proceedings and agrees not to act  
24 as a judge at any time in the future, all proceedings terminate and  
25 the files of the Commission remain confidential.

26 14. On or about May 15, 2001, Mr. Hartelius contacted me and  
27 informed me that after review of the matter with his counsel, Judge  
28 Smartt had decided to resign. On May 16, 2001, Judge Smartt

1 submitted his resignation to the Cascade County Commission, to  
2 become effective July 1, 2001, and publically announced his  
3 resignation. Judge Smartt further agreed with the Commission that  
4 he would not act as a judge at any time in the future.

5 15. Based upon Judge Smartt's resignation from his judicial  
6 office and his agreement with the Commission not to act as a judge  
7 in the future, the matter was considered closed and further work on  
8 the matter ceased.

9 16. On June 28, 2001, Judge Smartt sent a letter to the  
10 Cascade County Commission advising that he was considering  
11 withdrawing his resignation. I was advised by a Cascade County  
12 deputy attorney that because the County Commission had not filed  
13 Judge Smartt's resignation with the County Clerk and Recorder, the  
14 resignation remained subject to withdrawal.

15 17. On June 30, 2001, Judge Smartt faxed to Judge Warner a  
16 letter addressed to me and threatening the Commission with a damage  
17 suit unless the Commission dismissed the Complaints against him and  
18 allowed him to continue in office.

19 18. On July 2, 2001, Judge Warner advised Judge Smartt that if  
20 he maintained his judicial office, the formal complaint would be  
21 filed with the Clerk of the Supreme Court and that the Commission  
22 would follow the procedures set forth in its rules to determine if  
23 the complaint had merit.

24 19. On July 2, 2001, Judge Smartt withdrew his May 16, 2001,  
25 resignation.

26 20. On July 3, 2001, I filed a Formal Complaint in the Office  
27 of the Clerk of the Supreme Court pursuant to the Commission's  
28 February 7, 2001, Order and Rule 11(a), R.J.S.C. Pursuant to Rules

1 12(b) and (c)(i), R.J.S.C., I also prepared and mailed to Mr.  
2 Hartelius a Notice of Filing of Formal Complaint, along with an  
3 Acknowledgment of Service, requesting that Mr. Hartelius acknowledge  
4 service on behalf of Judge Smartt.

5 21. On July 6, 2001, Mr. Hartelius visited my office, at which  
6 time he signed and provided me with the Acknowledgment of Service of  
7 Notice and Formal Complaint, the original of which has been filed in  
8 the Office of the Clerk of the Supreme Court.

9 22. Judge Smartt alleges in paragraph 21 of his Petition for  
10 Writ of Prohibition in this proceeding that Chairman Warner  
11 prematurely set a hearing on the formal complaint, doing so before  
12 Judge Smartt had filed his answer to the Formal Complaint. I  
13 participated in the scheduling conference with Judge Warner and Mr.  
14 Hartelius on July 11, 2001. At the time of the scheduling  
15 conference, Mr. Hartelius raised no objection to the holding of a  
16 scheduling conference or to scheduling of a date for the hearing. A  
17 transcript of the July 11, 2001, scheduling conference has been  
18 prepared, and is attached hereto as Exhibit A.

19 23. During the scheduling conference, Mr. Hartelius stated  
20 that he would be leaving the country on July 13, 2001, and would be  
21 out of his office until July 31, 2001, and asked for additional time  
22 in which to file Judge Smartt's answer to the Formal Complaint. I  
23 did not object to his request for additional time. Chairman Warner  
24 granted Mr. Hartelius until August 6, 2001, to file Judge Smartt's  
25 answer to the Formal Complaint.

26 24. The hearing was scheduled by Chairman Warner for November  
27 1 and 2, 2001. The scheduled hearing date is nearly 3 months after  
28 the August 6, 2001 deadline for filing of Judge Smartt's Answer.

1 The scheduled hearing date complies with Rule 12(d), R.J.S.C., which  
2 requires that the hearing date be "no sooner than thirty (30) days  
3 after the time for filing a response has expired or after a response  
4 is filed." Due to the difficulty of finding a date that was  
5 mutually workable for all five of the Commission members as well as  
6 the parties, it was essential that a scheduling conference be  
7 conducted as soon as possible to assure that there was no undue  
8 delay in hearing the matter.

9 25. Judge Smartt has not alleged or identified any prejudice  
10 or harm resulting from holding a scheduling conference prior to  
11 filing his answer. Chairman Warner fully accommodated Mr.  
12 Hartelius' requests concerning the time necessary for Judge Smartt  
13 to file a response and to prepare for hearing. Had Mr. Hartelius  
14 objected to the scheduling conference being conducted prior to the  
15 filing of the answer, Chairman Warner could have decided to hold the  
16 scheduling conference after the filing of the Answer.

17 26. Judge Smartt also suggests that he has not been provided  
18 with all of the information and materials to which he is entitled.  
19 To the contrary, I have provided Judge Smartt's counsel, Mr.  
20 Hartelius, with copies of all of the documents upon which the Formal  
21 Complaint was based, as required by Rule 12(f), R.J.S.C.

22 27. Mr. Hartelius visited my office on July 7, 2001, without  
23 any advance notice and asked to review my file. At that time, I  
24 provided Mr. Hartelius with a complete copy of the investigative  
25 file of the Criminal Investigation Bureau concerning the allegations  
26 of Mr. Dye. I also advised Mr. Hartelius that I would work  
27 cooperatively with him to provide all of the information to which  
28 Judge Smartt was entitled. Mr. Hartelius made no objection or



1 further demand at that time. I also requested that Mr. Hartelius  
2 put in writing further requests for information or documents, so  
3 that I could respond with due consideration of the merits of his  
4 request. He agreed to do so.

5 28. On July 16, 2001, I provided to Mr. Hartelius copies of  
6 all of the additional documents from my file upon which the Formal  
7 Complaint was based, plus numerous additional documents. I have  
8 endeavored to cooperate in providing full disclosure to Mr.  
9 Hartelius of the information upon which the Formal Complaint is  
10 based, and I believe that I have done so. Further, I am not aware  
11 of any exculpatory evidence in the files that has not been provided  
12 to Judge Smartt.

13 29. In addition, on August 2, 2001, I personally reviewed the  
14 Commission's files regarding the pending complaints against Judge  
15 Smartt to determine whether the files contained documents upon which  
16 the Formal Complaint was based which had not previously been  
17 provided to Judge Smartt. I did not find any such additional  
18 material or documents, and I believe that Judge Smartt has been  
19 provided with all information and documents to which he is entitled.

20 30. To the best of my knowledge, prior to filing his Petition  
21 for Writ of Prohibition in this Court, Judge Smartt did not raise  
22 before the Commission by motion or otherwise the various  
23 jurisdictional and procedural defects he now alleges, and the  
24 Commission has, therefore not had the opportunity to consider his  
25 arguments or to take whatever corrective action, if any, may be  
26 appropriate or necessary.

27 31. Prior to bringing his petition and ex parte request for  
28 a writ before the District Court, to the best of my knowledge Judge

1 Smartt did not give any notice whatsoever to the Commission or to  
2 the undersigned counsel of his intent to seek an order restraining  
3 the Commission and the prosecution of the matter pending before the  
4 Commission. Further, Judge Smartt did not certify to the Court in  
5 writing the efforts he had made to give notice to the Commission and  
6 its staff, or the reasons that he alleged that notice should not  
7 have been required.

8 32. On July 27, 2001 Judge Harris, on his own initiative,  
9 submitted to the Commission a written verification of his original  
10 October 19, 2000, written Complaint to the Commission. A true and  
11 correct copy of Judge Harris's July 27, 2001, submission to the  
12 Commission is attached hereto as Exhibit B.

13 33. In light of the Writ of Prohibition issued by the Court,  
14 of which I first had knowledge and notice on July 25, 2001, I have  
15 not called to Mr. Dye's attention the fact that he has not submitted  
16 a verified written complaint and I have not inquired whether he  
17 desires to submit a verified written Complaint to the Commission.  
18 However, based upon my discussions with Mr. Dye prior to the filing  
19 of Judge Smartt's Petition for Writ of Prohibition, I have no doubt  
20 that Mr. Dye will sign and submit a verified complaint to the  
21 Commission regarding the allegations he has made against Judge  
22 Smartt.

23 34. The matter pending before the Commission is based upon  
24 complaints made by Mr. Harris and Mr. Dye, and both complainants had  
25 unequivocally expressed a desire to pursue their complaints before  
26 the Commission and a willingness to cooperate fully, including  
27 testimony under oath, in the Commission proceedings. The lack of  
28 verified written complaints prior to filing of the Formal Complaint

1 is a matter of form rather than substance.

2 35. Any issue or defect existing as a result of the absence of  
3 verified written complaints has been cured with respect to the  
4 Harris allegations by the recent submission of a verified written  
5 complaint by Judge Harris, and can be cured with respect to the Dye  
6 allegations by submission of a verified written complaint by Mr.  
7 Dye. Judge Smartt has been treated fairly in this matter. He has  
8 been provided with all information and documents to which he is  
9 entitled. He has been provided with ample opportunity to respond to  
10 the allegations and provide information supporting his position.

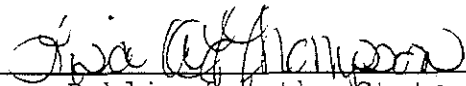
11 36. Judge Smartt would suffer no prejudice as a result of  
12 permitting or considering the absence of verified written complaints  
13 to be cured by the subsequent submission of verified written  
14 complaints.

15 DATED this 7 day of August, 2001.

16  
17 By:   
18 Gregory G. Gould

19  
20 SUBSCRIBED AND SWORN TO before me this 7<sup>th</sup> day of August,  
21 2001.

22 (NOTARIAL SEAL)

23   
24 Notary Public for the State of Montana  
Residing at: Helena, Montana  
My Commission expires: October 12, 2003

*Cascade County Justice Court*  
*Great Falls, Montana*

Judicial  
Standards Commission

JUDGE SAMUEL L. HARRIS  
JUSTICE OF THE PEACE  
CASCADE COUNTY COURTHOUSE  
GREAT FALLS, MT 59401

JUL 31 2001  
Telephone: (406) 454-6875  
FAX: (406) 454-6877

July 27, 2001

Sharon B. Parrish, Exec. Secretary  
Judicial Standards Commission  
PO Box 203002  
215 N. Sanders, Room 315  
Helena, MT 59620-3002

**COPY**

Re: Complaint against Judge Michael S. Smartt

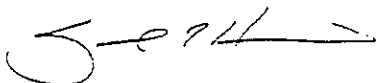
Members of the Judicial Standards Commission:

On October 19, 2000, I submitted a complaint against Judge Michael S. Smartt (your file # 01-1). On July 3, 2001, a formal complaint was filed with the Judicial Standards Commission based upon my complaint and the complaint of Troy Nelson Dye. I have since been informed that my complaint was not verified, in that the Judicial Standards Commission "FORM A" is not in the file. It was my intent to file a formal complaint that would initiate an action by the Judicial Standards Commission against Judge Smartt. I believed that I had submitted the proper forms in October of 2000. Apparently, the form did not reach the file or I mistakenly omitted "FORM A". In either case, I believe that this matter should be pursued.

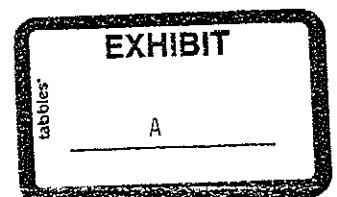
Please find enclosed a verified complaint against Judge Michael S. Smartt on "FORM A" with attachment A (my original complaint with exhibit A). I submit this complaint to the Judicial Standards Commission as verification of my original complaint, or in the alternative, if my complaint filed in October 2000 is not adequate, as a new complaint for the Commission to review and take appropriate action.

In your consideration of this matter, I ask the commission to remember that it is the only body with the ability to protect the public from Judge Smartt in this instance. A Judge should not be permitted to avoid responsibility for heinous acts in office, such as indulging in child pornography in a public office, simply because a complaint had a minor defect in form, but was valid in its substance. Thank you for your consideration of this matter.

Respectfully yours,



Samuel L. Harris  
Justice of the Peace



"FORM A"



## Judicial Standards Commission State of Montana

### COMPLAINT

The undersigned being first duly sworn, upon oath, states the following facts showing misconduct on the part of the following named judge, to-wit:

NAME OF JUDGE: MICHAEL S. SMARTT

ADDRESS: 415 2ND AVE N

GREAT FALLS, MT 59401

Based on the attached Canons of Ethics, please cite which Canon(s) you feel the judge has violated and why. If you cannot clearly identify which canon the judge has violated, then your complaint is not within the purview of this Commission to review.

The facts of the above Judge's misconduct or unethical conduct are as follows: (Please state in your own words the misconduct or unethical conduct with information as to when and where the misconduct occurred, and names of other people involved.)

*SEE ATTACHMENT A, INCORPORATED BY THIS REFERENCE*

(If more space is needed, you may attach additional sheets to this complaint and mark them a, b, c, etc.)

The names and addresses of other persons who are witnesses to or have information as to the misconduct of the above judge are:

NAME: <u>SUE STEVENSON</u>	NAME: _____
ADDRESS: <u>415 2ND AVE N</u>	ADDRESS: _____
<u>GREAT FALLS MT 59401</u>	_____
PHONE NO: <u>454-6873</u>	PHONE NO: _____

(Names of additional witnesses may be listed on a separate sheet and attached.)

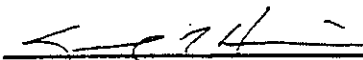
I (have X / have not \_\_\_\_\_) contacted the judge in regard to my complaint.

I will furnish additional information to your Commission if requested. If the complaint is investigated, I will cooperate with your Commission and furnish the evidence I have and will testify at any hearing on this complaint.

My full name, address and telephone number is:


NAME: SAMUEL L. HARRIS  
ADDRESS: 415 2ND AVE N  
GREAT FALLS MT 59401  
PHONE #: 454-6873

DATED this 27<sup>th</sup> day of JULY 2001, ~~19~~.

  
SIGNATURE

SUBSCRIBED AND SWORN TO before me this 27<sup>th</sup> day of July, 2001

(SEAL)

  
Notary Public for the State of Montana  
Residing at Great Falls  
My Commission expires 2-19-2002

RETURN TO: SHARON B. PARRISH, EXEC. SECRETARY  
JUDICIAL STANDARDS COMMISSION  
PO BOX 203002  
215 N. SANDERS, ROOM 315  
HELENA, MT 59620-3002

# *Cascade County Justice Court*

## *Great Falls, Montana*

JUDGE SAMUEL L. HARRIS  
JUSTICE OF THE PEACE  
CASCADE COUNTY COURTHOUSE  
GREAT FALLS, MT 59401

Telephone: (406) 454-6873  
FAX: (406) 454-6877

October 19, 2000

"A"

Sharon B. Parrish, Exec. Secretary  
Judicial Standards Commission  
PO Box 203002  
215 N. Sanders, Room 315  
Helena, MT 59620-3002

Re: Sexual Harassment Complaint against Michael S. Smartt, Justice of the Peace

Members of the Judicial Standards Commission:

I respectfully submit the following complaint against Michael S. Smartt, Justice of the Peace for Cascade County and request that the Judicial Standards Commission remove him from office.

Justice of the Peace, Michael S. Smartt has persistently committed willful serious misconduct in office by misusing county equipment and county purchased services. Specifically, Judge Smartt has daily used the Cascade County computer system and internet service paid for by the county to access homosexual pornography during work hours, while in a county office. Judge Smartt's pornographic activity has been chronic, perverse, and extensive. Judge Smartt's pornographic activity has exposed two county employees to highly offensive and obscene material in the workplace and is guilty of sexual harassment because he has created a hostile work environment, pursuant to Cascade County Personnel Policy section 10-2 and Title VII of the Civil Rights Act of 1964. Judge Smartt has violated the law by his actions while in office, which is contrary to Canon 4 of the Canons of Judicial Ethics.

His conduct in improperly using the county's computer and internet access for personal sexual gratification is clearly an impropriety in violation of Canon 4 of the Canons of Judicial Ethics. Judge Smartt's conduct is more than a simple one-time infraction or curiosity—he has consistently spent substantial portions of every working day viewing pornography on county time, using county resources. The extent of his addiction to pornography is shocking. Judge Smartt is visiting up to 50 pornographic websites a day. This conduct clearly casts a pall of impropriety over his court and the bench. Such extensive perversion, paid for by tax dollars, is an offense and affront to the dignity and respect of the bench. The public would be sickened and shocked that a public official and

member of the judiciary spends much of his day at work viewing pornography. This individual is of unfit character to sit on the bench. Such conduct demonstrates Judge Smartt's clear lack of the ethics and morals necessary to perform his job. He has breached the public trust.

Judge Smartt's activities were revealed by the routine functions performed by our female office manager. On Friday, October 13, 2000, Judge Smartt worked in his office from 11:15 a.m. to approximately 3:00 p.m. At approximately 5:20 p.m., the office manager, Susan Stevenson, was shutting down the office for the weekend. As per her usual routine, Sue unplugged the coffee maker, shut off the copier, and shut off the computers assigned to the clerks. During the course of these tasks, Sue mentioned to me that she has had some difficulty with our computer systems automated file backup system. Sue stated that staff members are often leaving programs open on their computers, causing the backup to fail. Sue stated that the problem is most frequently caused by Judge Smartt's terminal. Leaving a terminal on with our calendar program and wordperfect open does not seem to interfere with the backup. These are the only programs necessary to the Judges duties. I stated this to Sue and she said that when she shuts Judge Smartt's computer down, the program that is running is not the calendar or wordperfect. Sue attempted to describe this program to me, but it did not sound like any program that is installed on our system. Sue then stated that she was sure Judge Smartt's computer would be on tonight, and that I could go with her as she shuts it off and determine what the program was.

Sue and I entered Judge Smartt's office. The computer had powered down and the screen was blank, denoting the power save mode. To activate the screen, Sue placed her hand on the mouse and moved it slightly. As she did so, a picture popped up immediately. The picture was a series of 3 pornographic, homosexual photos. (Attached as exhibit A) Sue exclaimed, "Oh my God" and immediately left the room. Her shock at the unexpected display of pornography on an office computer was obvious. I looked at the image and realized that it was a photograph on a pornographic web site. Judge Smartt had left his computer logged on to a pornographic website when he left for the weekend. He had accessed the site during working hours. I printed the screen, then shut his computer off.

I considered the matter overnight. I was concerned that a female staff member had been exposed to this obscene material, as well as myself. I was also concerned that Judge Smartt was doing this on county time, with county resources and equipment.

I determined that this was a significant incident and that some action must be taken. I did not know what should be done at that point. I determined that Judge Smartt's use of the computer was inappropriate and possibly illegal. The conduct also exposes the county to possibly civil liability on a sexual harassment claim for creating a hostile work environment for myself and Susan Stevenson. As Susan Stevenson's direct supervisor, I felt an obligation to investigate and ascertain the degree of his misconduct in our office and on our office equipment. On Sunday, October 15, 2000 I entered the Courthouse in the evening to do my paperwork. Upon completing my work, I entered Judge Smartt's office and looked at his computer. He had used it over the weekend and it was again running. I opened the internet explorer and accessed the history file, which shows all recent websites accessed by that user. The default setting for the history file was 20 days. The history



displays the current week by individual days and then displays the last weeks activities in a weekly block.

The following is a non-inclusive list of the sites displayed in the short term history file on Judge Smartt's computer:

Week of 9/25/00

1-100gay.hardonheaven...	ass-village.porncity.net	bannervip.web1000.com
bears.gay-space.com	coloradobear.cnhost.com	cubsnbears.web1000.com
fantasy-hwy.porncity.net	gayonline-free.fr	gayvill.porncity.net
guygalleries.com	id.adultck.com	manpics2000.com
maleroom.freexxxspace.com	members.fortunecity.com	secure.adultcheck.com
ss10.sexshare.com	www.55megs.com	www.a1-gay-city.com
www.a1-gay-clubs.com	www.a1-sex-xxx.com	www.arrakis.es
www.chrisstone.net	www.cole-tucker.com	www.coppertopmen.com
www.flesh4free.com	www.gaymansex.com	www.gaynudeboys.com
www.gaysight.com	www.gay-space.com	www.gaytogay.com
www.gayville.com	www.gohip.com	www.hotmenlive.com
www.hungmen.net	www.malebox2000.com	www.pridesites.com
www.1.1.nudehost.com	www1.nudehost.com	www3.adultcheck.com

Week of 10/2/00 (Judge Smartt only in office on morning of 10/2/00 and gone the rest of the week for mandatory training)

amateur.sexhound.net	black.sexhound.net	gay.sexhound.net
hairtrigger.masterhost.com	hardcore.sexhound.net	htrigger.hardonheaven.com
www.bigfoot.com	www.flesh4free.com	www.freegaypage.com
www.geocities.com	www.grandefratelio.com	www.grandefratello.jumpy.
www.penilefitness.com	www.sexallounge.com	www.traffico.com

Tuesday, October 10, 2000

amateur.sexhound.net	amateurpits.badgays.com	art.adultspace.com
ass-village.porncity.com	beanbrothers.hitmen.com	bearclan.web1000.com
clicks.firstname.com	cotac.com	dir.clubs.yahoo.com
free.orgasm.com	gay.sexhound.net	hairtrigger.majorhost.com
horny.adult-space.com	id.adultcheck.com	lachlan.fsn.net
manpics2000.com	members.theglobe.com	nitrous.exitfuel.com
studs.gay-space.com	www.bearcorral.com	www.bigfoot.com
www.bsb.com	www.bullseye.com	www.buzzlink.com
www.dudetown.com	www.edengay.com	www.flesh4free.com
www.freegaypage.com	www.gaynudeboys.com	www.gaysexsites.com
www.gaytown.com	www.geocities.com	www.gohip.com
www.hairymen.com	www.hitmen.com	www.hungmen.com
www.huskyhunks.com	www.celebrityunderw...	www.menhouse.com
www.mesohorny.com	www.napanet.com	www.penilefitnes.com

www.pridesites.com  
www.vanguard.com  
www.men.com

www.theglobe.com  
www.xxxvisions.com  
xdoor.com

www.traffico.com  
www3.adultcheck.com  
xhunk.hitmen.com

Thursday, October 12, 2000

adengine.theglobe.com  
grosbear.free.fr  
manpower.sexpikz.com  
www.gaytaliano.com  
www.hornydaddy.com  
www.redlightvideo.com  
www.xxx500.com

banner1.mr-cash.com  
id.adultcheck.com  
www.gay-banner.com  
www.gaytreffberlin.de  
www.immt.com  
www.sexpikz.com  
www3.adultcheck.com

bears.gay-space.com  
manpics2000.com  
www.gaysexsites.net  
www.gargaud.de  
www.pornbaron.com  
www.simplygay.com  
xxxgay.mr-cash.net

Friday, October 13, 2000

home5.swipnet.se  
www.bullseye.org  
www.hittracker.com  
www.ozemail.com.au  
www.zzap.org

ld.adultcheck.com  
www.flesh4free.com  
www.jdandfriends.com  
www.sexlinx.com

www.bedfellow.com  
www.freshtwinks.com  
www.nocrap.com  
www.theoutlaw.com

Saturday, October 14, 2000

adult2.100free.com  
back-alley.porncity.net  
contact.dutchbear.com  
home.wanadoo.nl  
members.nbc.com  
secure.adultcheck.com  
www.boys4men.com

ars.centurio.com  
beardstud.free-gay.com  
free.erodrom.de  
ld.adultcheck.com  
members.tripod.com  
secure.safesite.com

asp37.free.fr  
bearhunt.web1000.com  
gay.sexhound.net  
manpics2000.com  
members.xoom.com  
texamale.com

Monday, October 16, 2000

id.adultcheck.com  
www.4hornyteens.com  
www.male-erotica.com  
www.teenage-jocks.com

nitrous.exitfuel.com  
www.adultcheck.com  
www.nakedment.to  
www.xxxads.net

nitrous.internetfuel.com  
www.flesh4free.com  
www.new-teens  
www3.adultcheck.com

Tuesday, October 17, 2000

id.adultcheck.com  
nitrous.exitfuel.com  
www.americs.com  
www.geocities.com  
www.meninbondage.nu  
www.xxxtrailertrash.com

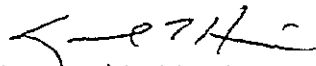
images.flaminglips.net  
www.adultcheck.com  
www.flaminglips.net  
www.lustpuppy.com  
www.nakedmen.to

musclebears-3.free-gay.com  
www.ahhmen.com  
www.gaynakedcity.com  
www.male-erotica.com  
www.studphotos.com

Several of these sites appear to be possible sources of child pornography, such as [www.boys4men.com](http://www.boys4men.com), [www.gaynudeboys.com](http://www.gaynudeboys.com), [www.teenage-jocks.com](http://www.teenage-jocks.com), [www.new-teens.com](http://www.new-teens.com), [www.4hornyteens.com](http://www.4hornyteens.com), and [cubsnbears.web1000.com](http://cubsnbears.web1000.com). This activity demonstrates that Judge Smartt is of unfit character to serve on the bench. On October 19, 2000, Judge Smartt's computer and hard drive were seized by the FBI for investigation.

Rule 9 of the Rules of the Judicial Standards Commission provides that violation of the Canons of Judicial Ethics which brings the judicial office into disrepute or impropriety are grounds for removal. The filth that Judge Smartt is involved in within a public office clearly brings the judicial office into disrepute. Please take action to correct this situation by removing Judge Smartt from office. Cascade County and the State of Montana deserve better from their public officials.

Respectfully yours,



Samuel L. Harris  
Justice of the Peace



MANSCAN AUSTRALIA'S AMATEURSE  
[www.ozemail.com.au/~mustach](http://www.ozemail.com.au/~mustach)

EXHIBIT A

JUDICIAL STANDARDS COMMISSION  
STATE OF MONTANA

INQUIRY CONCERNING COMPLAINTS OF:	)	
	)	
SAMUEL L. HARRIS and TROY NELSON DYE,	)	Clerk's No. 01-464
	)	
Complainants,	)	Cause No. 01-1 (FORMAL)
	)	
-vs-	)	Transcript of Scheduling
	)	Conference
MICHAEL S. SMARTT, Justice of the Peace,	)	
	)	July 11, 2001
Respondent.	)	

Transcription of tape-recorded scheduling conference held before Hon. John Warner, Chairman, Judicial Standards Commission, at the Hill County Courthouse, Havre, Montana. Transcribed by Douglas D. Christensen, Registered Merit Reporter.

APPEARANCES: (By Telephone)

Judicial Standards  
Special Counsel:

GREGORY G. GOULD  
24 West Sixth Avenue  
P.O. Box 1144  
Helena, Montana 59624

For the Respondent: CHANNING J. HARTELIUS  
600 Central Plaza, #408  
P.O. Box 1629  
Great Falls, Montana 59403-1629

Also present: Eric Bunn  
12th Judicial District Court Law Clerk

*Douglas D. Christensen, RMR, CRR*  
*Havre, Montana*

EXHIBIT

B

1 THE COURT: Good morning, gentlemen.

2 MR. HARTELIUS: Good morning.

3 MR. GOULD: Good morning, Judge.

4 THE COURT: Eric is here. Why I called is, I'm  
5 probably correct in that everyone would like to dispose of this  
6 thing with Mr. Smartt in an efficient manner.

7 What I'd like to do is set kind of a basic schedule at this  
8 point, but to inquire as to when everybody thought they could  
9 be ready.

10 What I did was I talked with a fellow at City Hall in Great  
11 Falls, and we can use the counsel chambers there, but we have  
12 to schedule them; and from my schedule, and a couple of the  
13 commission members, we were wondering if counsel could be ready  
14 and we could just have this hearing on the 17th and 18th of  
15 September; is that enough time that meets all the rules? Mr.  
16 Hartelius, do you think you're ready?

17 MR. HARTELIUS: Judge, I have to say, reluctantly, no.  
18 I'm leaving for Scotland, for the British Open, on Friday, and  
19 I won't be back until July 31st; and Greg and I, I'm going to  
20 jump the gun, hopefully, with the blessing of the Court to see  
21 what we might think of what discovery things we need, and we  
22 both agree that we want to meet with some people together and  
23 do some of that. So I'm thinking September is a little early,  
24 especially since I've got a major jury trial on September 10th,  
25 so I would just have to say that's not going to work.

1 THE COURT: Well, okay. Let me then inquire a little  
2 further. The rules don't provide for much discovery. I don't  
3 want to get in the way, but this is more like a criminal case  
4 even though it's not, in any sense, a criminal action, but in  
5 other words, discovery is supposed to be limited. Are you  
6 planning on just meeting with witnesses or something and kind  
7 of taking, having a tape recorder going?

8 MR. HARTELIUS: That was a consideration. You know, a  
9 couple of the key players I might want to depose, but I don't  
10 want to make this a major project for obvious reasons. Greg  
11 and I were going to kind of talk a little bit to solidify what  
12 we needed to do, but I'm not planning on, and I don't want to  
13 spend the money to undertake a major deposition, all that kind  
14 of stuff. There's only a couple of guys that --

15 THE COURT: Yeah, I probably wouldn't allow that, but  
16 since we're thinking along the same lines.

17 MR. HARTELIUS: I think I probably want to depose Dye,  
18 but Greg and I maybe talked about getting together with him,  
19 you know, initially, and I don't know if we'd need to follow-up  
20 with a deposition or such anyway.

21 The other players I don't know that we need to depose, but  
22 I'd like to talk to, and Greg and I thought it would be a good  
23 idea, to save them time and us time, that we'd jointly meet  
24 with Judge Moore or talk to him on the phone and, you know, a  
25 couple of the other players.

1 THE COURT: Well, that's fine. What are you thinking  
2 time-wise?

3 MR. HARTELIUS: Am I stating things properly, Greg?

4 MR. GOULD: Yes, I think that's right. We talked  
5 about at least a couple of people and trying to do this  
6 cooperatively, you know, and really limit the need for any  
7 formal depositions. I don't know which -- I don't intend to  
8 take any at this point, and --

9 THE COURT: Yeah. Well, I hate to stretch it out.

10 MR. HARTELIUS: I mean, October --

11 THE COURT: What about the 15th?

12 MR. HARTELIUS: Of October?

13 THE COURT: Yeah.

14 MR. HARTELIUS: Yeah, I think I could live with that.  
15 I've got another trial scheduled on the 9th, but I think that  
16 that's going to be continued, so if we want to do the 15th I  
17 could be ready by then.

18 THE COURT: Okay.

19 MR. GOULD: Works for me as well, Judge.

20 THE COURT: All right. The 15th and 16th, I've got to  
21 see what we've got to move here. That's criminal week. Well,  
22 it's got to be done. Okay. Let's then hold open -- oh, am I  
23 right about two days for this, Mr. Hartelius? People are going  
24 to tell their story, it shouldn't be a long story.

25 MR. HARTELIUS: I would think, to be safe, you set



1 three days; but two days --

2 THE COURT: Well, two days is what we can do, and what  
3 we would do is if it gets even a little out and it looks like  
4 we're getting there, we'd start on a Monday, if we'd start at  
5 nine and we'd even go late because we don't have a jury and a  
6 lot of personnel; in other words, we might even work into the  
7 evening. We've done that before, and then try and wrap it up  
8 the next day.

9 MR. HARTELIUS: Okay.

10 THE COURT: So they might be long days. Get your iron  
11 pants out.

12 MR. HARTELIUS: Okay.

13 THE COURT: All five commission members will be there.  
14 Well, this is what I'm going to do, then --

15 MR. HARTELIUS: Judge, before that, I also talked to  
16 Greg in light of my situation of going to Scotland. If we have  
17 a date, I wanted to see if we could file the answer like August  
18 3rd when I get back and send it in, so it would be officially  
19 filed August 6th. I just don't have time with all of this  
20 Scotland thing coming up, and I need to help Tiger Woods with  
21 his swing, of course.

22 THE COURT: Well, the answer is a provision more  
23 designed for when it might do some good. In this case he will  
24 deny, you know.

25 MR. HARTELIUS: Right.

1 THE COURT: And it's kind of like a not guilty plea,  
2 although, again, I don't even want to hint that this is  
3 anything of a criminal nature, but it's sui generis, it's just  
4 kind of by itself. Mr. Gould, does that cause you any  
5 problems?

6 MR. GOULD: No, not at all. That's fine with me if he  
7 files it by the 6th.

8 THE COURT: By the 6th. All right. Well, this is  
9 what I plan on doing, then: I'll enter an order that unless --  
10 you see, I have to deal with more than myself, too. I've got  
11 to deal with four other commission members, and so you can  
12 anticipate by the end of the week receiving an order setting  
13 this for trial, or hearing, on the 15th of October, and the  
14 answer, response will be due by the 6th of August. And this is  
15 kind of a set in stone; in other words, we're going to have to  
16 either be dead or sick because this is what we're going to do.

17 And I will expect, then, that if someone wants a subpoena,  
18 you know, and I think you both will want some subpoenas, you  
19 just file a request for subpoena with me, send the original  
20 request for subpoena, or whatever you want, for order allowing  
21 discovery or something, the original to the Clerk of the  
22 Supreme Court with a copy to me, and I'll try to get you an  
23 order back right away.

24 If it's more of an administrative thing like a request for  
25 a subpoena, probably we'll grant it. If it appears that it may

1 be contested or there may be some argument about it, I'll  
2 schedule another one of these conferences, phone conferences.

3 MR. HARTELIUS: Judge, could we maybe save ourselves  
4 some time going through that process and Greg and I -- I don't  
5 think we're going to have a dispute over discovery. Can we  
6 maybe just do a stipulation as to what we're going to do?

7 THE COURT: No, that doesn't work. If you do a  
8 stipulation, I invite you to do that, but then I'll order the  
9 stipulation.

10 MR. HARTELIUS: Right, exactly.

11 THE COURT: Just to keep it out, but I may not, too,  
12 because -- just so that everyone knows, it will be my attitude  
13 in this that this will be simple in an attempt to be sensitive  
14 to the respondent judge, and even then I wanted it quicker than  
15 we'll get it, but to just get it over with.

16 So I will take more control of the proceedings than  
17 otherwise than in a civil action or in a criminal case to just  
18 get it over with and to tell this story, and then the  
19 commission will decide. I don't know what they'll decide at  
20 all. And none of us, of course, have ever met any of these  
21 people.

22 MR. GOULD: Could I ask a couple of other things,  
23 Judge?

24 THE COURT: Sure.

25 MR. GOULD: I don't know, Channing, whether you're

1       contemplating filing any kind of pre-hearing motions or do we  
2       need to set some sort of deadline for any motions or --

3               THE COURT: Well, I don't know what kind of motions  
4       would be available, so I wouldn't set a deadline. I mean,  
5       neither the rules of civil nor criminal procedure apply. If  
6       you want something, you just ask. I don't know. What kind of  
7       motions?

8               MR. GOULD: Well, I'd have to tell you, I don't know  
9       yet.

10              THE COURT: If you want something, ask.

11              MR. GOULD: Okay.

12              THE COURT: I guess it would be a motion, that would  
13       be the proper title because we're all used to that.

14              MR. HARTELIUS: But what I might try to do, since  
15       you're being kind enough to give me that additional time,  
16       although I only have like three days when I get back, but that  
17       will be enough, because I might include motions and whatnot in  
18       the response, and then the discovery process, or whatever we're  
19       doing, to talk to people that are going to be witnesses, then  
20       there might be some other motions.

21              THE COURT: Yeah. Well, you can just go out and do  
22       whatever you do. I mean, everybody is going to tell the truth.

23              MR. HARTELIUS: That's what it's supposed to be about.

24              THE COURT: All right. Well, my main purpose here was  
25       to set a final date, and I hadn't -- I had only partially

1 confirmed the 17th of September, but I will go about my  
2 business trying to get that done and get that order out  
3 immediately, then we know where we'll be.

4 MR. GOULD: I just have one other thing I'd like to  
5 ask about, and that is under the Commission's rules, it  
6 provides that -- there's kind of a mutual disclosure of  
7 witnesses and documents, and I'm sure Channing and I are going  
8 to get along pretty well here and everything, but do we want to  
9 have some date by which that has to be done?

10 THE COURT: You know, that's not a bad idea, a  
11 suggestion.

12 MR. HARTELIUS: I like that. I'm looking at that rule  
13 as we speak, and it says that "the responding judge shall, upon  
14 request," both of us are requesting, "be provided with the  
15 names and last known address of witnesses that shall be called  
16 to testify together with copies of all evidence."

17 THE COURT: What about the last, let's say by the 28th  
18 of September, which is a Friday, that those be due.

19 MR. HARTELIUS: I'd like that, because that gives us  
20 two weeks to then object or, you know, motions in limine or  
21 whatever.

22 THE COURT: Or say what in the hell is this guy going  
23 to say and then go out and find it.

24 MR. HARTELIUS: Yeah. But the pressure that I get  
25 from Greg, and I make this clear, is he and I, I think, are

1 going to have a pretty good handle on who the players are and I  
2 like that deadline of September 28th, but I'm encouraging Greg,  
3 when I get back, that maybe we take like two or three days if  
4 you want to run up to Sidney and Lewistown and kind of just  
5 grab this by a short hair and get it done, then we can get all  
6 this stuff behind us.

7 MR. GOULD: I look forward to a road trip to Sidney  
8 with you, it will be a marvelous opportunity.

9 MR. HARTELIUS: I agree. Let's do it early.

10 THE COURT: Well, I'm not going.

11 MR. HARTELIUS: Yeah, Sidney is nice at this time of  
12 year, about 110 degrees and --

13 THE COURT: I've been down to Sidney and it's a very  
14 clean, very pleasant little place, however --

15 MR. HARTELIUS: I understand. We may do the Sidney  
16 call, but I don't know. I might feel it appropriate just to  
17 take a walk through to be familiar with the site and all that  
18 kind of stuff, but we'll get that worked out. Anything else I  
19 need to know about?

20 THE COURT: I don't think so. The hearing date was  
21 the most important, so unless we get a glitch and I'm back on  
22 the phone trying to find another date, that's going to be it.  
23 All right. Thank you, gentlemen.

24 MR. GOULD: Thanks very much, Judge.

25 MR. HARTELIUS: Greg, we'll be in touch.

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(Off the Record.)

THE COURT: Everybody there?

MR. HARTELIUS: I'm here.

MR. GOULD: I'm here.

THE COURT: Good. Okay. My schedule was wrong. I can't be there on the 15th. I have an inoperable conflict with the rest of the district judges and I'm on that judicial counsel, I can't not go, and so is McLain and so he's got to be there. So it's my understanding, then, Mr. Hartelius, that you have the 9th that you have a trial; right?

MR. HARTELIUS: Right.

THE COURT: So that's out. McLain can't make it on the 3rd. What about the 25th?

MR. HARTELIUS: Of October?

THE COURT: Of October.

MR. HARTELIUS: That's fine, yeah, because I'm good that day and I'm good the next week.

MR. GOULD: Presently I have an arbitration scheduled that's like an eight-day matter starting the 22nd and going through the 31st of October.

THE COURT: So we really -- see, I knew this was going to happen. So we've got McLain is in Polson with some kind of a case on the 3rd. The 9th is out for Hartelius, the 16th is out for the counsel, the 25th is out for Gould.

MR. GOULD: Right.

1 THE COURT: And can we go into late September?

2 MR. HARTELIUS: That's when I'm all trialed up.

3 THE COURT: See, we're now in July, and if we don't do  
4 this, that's August, September, October.

5 MR. HARTELIUS: What about the 18th or 19th of  
6 October?

7 THE COURT: Let's take a look here.

8 MR. GOULD: That works for me.

9 THE COURT: No, I can't do it then. Well, wait a  
10 minute, now. The 18th and 19th is a Thursday and Friday. I  
11 don't know how long this conference is that I've got to be at.

12 MR. HARTELIUS: Do you want to check that? Because  
13 the 18th and 19th works fine for me.

14 THE COURT: All right. You guys go back to work. I  
15 will check it and make positive sure, and I'll be back on the  
16 phone to you in a few minutes. Hang around the office, will  
17 you, and wait for my call. Thank you, gentlemen. Appreciate  
18 it.

19 (Off the Record.)

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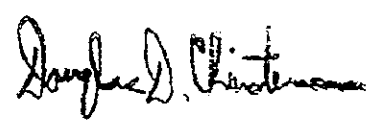
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C E R T I F I C A T E

I, Douglas D. Christensen, Official Court Reporter, within  
and for the 12th Judicial District, State of Montana, duly  
appointed, qualified and acting, do hereby certify that the  
foregoing tape-recorded proceedings were duly transcribed by me  
as stated in the caption hereof.

I do further certify that the foregoing is a true and  
correct transcript of the testimony and proceedings transcribed  
by me into shorthand notes and that the same was accurately  
written out in full and transcribed into the English Language  
to the best of my skill and knowledge.

Given under my hand this 30th day of July, 2001.



Douglas D. Christensen, RMR, CRR  
Official Court Reporter

NOTARY PUBLIC for the State of Montana  
Residing in Havre  
My Commission Expires August 14, 2004

1 Stanley T. Kaleczyc  
2 BROWNING, KALECZYC, BERRY & HOVEN, P.C.  
3 Attorneys at Law  
4 139 North Last Chance Gulch  
5 P.O. Box 1697  
6 Helena, Montana 59601  
7 (406) 443-6820

LISA KALLIO

8 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS & CLARK COUNTY

9	THE STATE OF MONTANA, ex	)	
10	rel. MICHAEL S. SMARTT,	)	Cause No. ADV 2001 458
		)	
11	Petitioner and Relator,	)	
		)	
12	v.	)	AFFIDAVIT OF HONORABLE
		)	SAMUEL L. HARRIS
13		)	
14	JUDICIAL STANDARDS	)	
15	COMMISSION AND ITS MEMBERS,	)	
16	HON. JOHN WARNER, Chairman;	)	
17	VICTOR F. VALGENTI, BARBARA	)	
18	EVANS, PATTY JO HENTHORN,	)	
19	and HON. ED McLEAN; and	)	
20	Staff,	)	
		)	
	Respondents.	)	
		)	

21 I, Samuel L. Harris, being duly deposed and sworn, state:

22 1. I am a Justice of the Peace for Cascade County, Montana

23 and have served in that capacity since 1999.

24 2. On or about October 19, 2000 I submitted a complaint

25 against Cascade County Justice of the Peace Michael S. Smartt to

26 the Judicial Standards Commission. It is my distinct recollection

27 that I completed Form A of the Rules of Procedure of the

1 Commission, which is the prescribed form for a verified complaint  
2 to be filed with the Commission, and had my signature notarized on  
3 the Complaint and attached as an exhibit to the complaint my letter  
4 dated October 19, 2000 detailing my specific allegations of  
5 judicial misconduct in violation of the Code of Judicial Ethics.

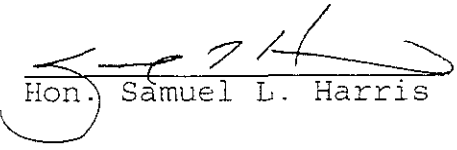
6 3. On or about July 22, 2001 I learned from a newspaper  
7 story in the Great Falls Tribune that Judge Smartt had alleged that  
8 my complaint on file with the Commission is not verified.

9 4. On or about July 24, I contacted Mr. Greg Gould, whom  
10 I knew had been retained by the Commission to file a formal  
11 complaint against Judge Smartt, and who had interviewed me prior to  
12 July 3, 2001 concerning my complaint, to determine whether my  
13 verified complaint was on file with the Commission. Mr. Gould  
14 advised me that no verification was on file.

15 5. By letter dated July 27, 2001 I forwarded to the  
16 Commission a verified complaint. (A true copy of my cover letter  
17 and verified complaint are attached as Exhibit A.) I sent the  
18 verified complaint on my own initiative and without any prompting  
19 or request from Mr. Gould or any member or representative of the  
20 Commission because I believe the matters contained in my Complaint  
21 need to be pursued by the Commission.

22 6. As stated in my cover letter of July 27, I submitted  
23 this verified complaint to the Commission as verification of my  
24 original complaint, or, in the alternative, if my October 2000  
25 complaint is found to be legally insufficient, as a new complaint  
26 of judicial misconduct by Judge Smartt.

1 Further affiant saith not.

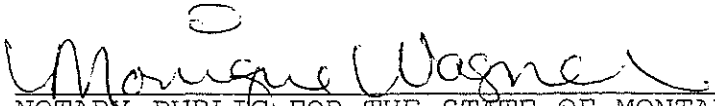
2   
3 Hon. Samuel L. Harris

4 STATE OF MONTANA )  
5 : ss.  
6 County of Cascade )

7 On this 10 day of August, 2001, before me, the undersigned,  
8 a Notary Public in and for the State of Montana, personally  
9 appeared Samuel L. Harris known to me to be the person whose name  
10 is subscribed to the foregoing instrument and acknowledged to me  
11 that he executed the same.

12 In witness whereof, I have hereunto set my hand and affixed my  
13 notarial seal on the day and year first above written.

14 (Notarial Seal)

15   
16 NOTARY PUBLIC FOR THE STATE OF MONTANA  
17 Residing at: Great Falls  
18 My commission expires: Sept 29, 2001

Cascade County Justice Court  
Great Falls, Montana

Judicial  
Standards Commission

JUDGE SAMUEL L. HARRIS  
JUSTICE OF THE PEACE  
CASCADE COUNTY COURTHOUSE  
GREAT FALLS, MT 59401

JUL 31 2001  
Telephone: (406) 454-6875  
FAX: (406) 454-6877

July 27, 2001

Sharon B. Parrish, Exec. Secretary  
Judicial Standards Commission  
PO Box 203002  
215 N. Sanders, Room 315  
Helena, MT 59620-3002

Re: Complaint against Judge Michael S. Smartt

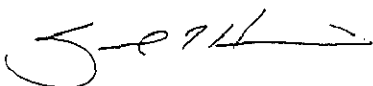
Members of the Judicial Standards Commission:

On October 19, 2000, I submitted a complaint against Judge Michael S. Smartt (your file # 01-1). On July 3, 2001, a formal complaint was filed with the Judicial Standards Commission based upon my complaint and the complaint of Troy Nelson Dye. I have since been informed that my complaint was not verified, in that the Judicial Standards Commission "FORM A" is not in the file. It was my intent to file a formal complaint that would initiate an action by the Judicial Standards Commission against Judge Smartt. I believed that I had submitted the proper forms in October of 2000. Apparently, the form did not reach the file or I mistakenly omitted "FORM A". In either case, I believe that this matter should be pursued.

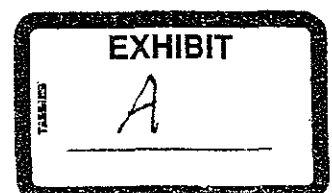
Please find enclosed a verified complaint against Judge Michael S. Smartt on "FORM A" with attachment A (my original complaint with exhibit A). I submit this complaint to the Judicial Standards Commission as verification of my original complaint, or in the alternative, if my complaint filed in October 2000 is not adequate, as a new complaint for the Commission to review and take appropriate action.

In your consideration of this matter, I ask the commission to remember that it is the only body with the ability to protect the public from Judge Smartt in this instance. A Judge should not be permitted to avoid responsibility for heinous acts in office, such as indulging in child pornography in a public office, simply because a complaint had a minor defect in form, but was valid in its substance. Thank you for your consideration of this matter.

Respectfully yours,



Samuel L. Harris  
Justice of the Peace





## Judicial Standards Commission State of Montana

### COMPLAINT

The undersigned being first duly sworn, upon oath, states the following facts showing misconduct on the part of the following named judge, to-wit:

NAME OF JUDGE: MICHAEL S. SMARTT

ADDRESS: 415 2ND AVE N

GREAT FALLS, MT 59401

Based on the attached Canons of Ethics, please cite which Canon(s) you feel the judge has violated and why. If you cannot clearly identify which canon the judge has violated, then your complaint is not within the purview of this Commission to review.

The facts of the above Judge's misconduct or unethical conduct are as follows: (Please state in your own words the misconduct or unethical conduct with information as to when and where the misconduct occurred, and names of other people involved.)

*SEE ATTACHMENT A, INCORPORATED BY THIS REFERENCE*

(If more space is needed, you may attach additional sheets to this complaint and mark them a, b, c, etc.)

The names and addresses of other persons who are witnesses to or have information as to the misconduct of the above judge are:

NAME: SUE STEVENSON NAME: \_\_\_\_\_  
ADDRESS: 415 2ND AVE N ADDRESS: \_\_\_\_\_  
GREAT FALLS MT 59401  
PHONE NO: 454-6873 PHONE NO: \_\_\_\_\_  
(Names of additional witnesses may be listed on a separate sheet and attached.)

I (have X / have not \_\_\_\_\_) contacted the judge in regard to my complaint.

I will furnish additional information to your Commission if requested. If the complaint is investigated, I will cooperate with your Commission and furnish the evidence I have and will testify at any hearing on this complaint.

My full name, address and telephone number is:

NAME: SAMUEL L. HARRIS  
ADDRESS: 415 2ND AVE N  
GREAT FALLS MT 59401  
PHONE #: 454-6875

DATED this 27th day of JULY 2001, ~~HE~~.

Samuel L. Harris  
SIGNATURE

SUBSCRIBED AND SWORN TO before me this 27th day of July, 2001

(SEAL)

Patti Jo Whesley  
Notary Public for the State of Montana  
Residing at Great Falls  
My Commission expires 2-19-2002

RETURN TO: SHARON B. PARRISH, EXEC. SECRETARY  
JUDICIAL STANDARDS COMMISSION  
PO BOX 203002  
215 N. SANDERS, ROOM 315  
HELENA, MT 59620-3002

# *Cascade County Justice Court*

## *Great Falls, Montana*

JUDGE SAMUEL L. HARRIS  
JUSTICE OF THE PEACE  
CASCADE COUNTY COURTHOUSE  
GREAT FALLS, MT 59401

Telephone: (406) 454-6873  
FAX: (406) 454-6877

October 19, 2000

"A"

Sharon B. Parrish, Exec. Secretary  
Judicial Standards Commission  
PO Box 203002  
215 N. Sanders, Room 315  
Helena, MT 59620-3002

Re: Sexual Harassment Complaint against Michael S. Smartt, Justice of the Peace

Members of the Judicial Standards Commission:

I respectfully submit the following complaint against Michael S. Smartt, Justice of the Peace for Cascade County and request that the Judicial Standards Commission remove him from office.

Justice of the Peace, Michael S. Smartt has persistently committed willful serious misconduct in office by misusing county equipment and county purchased services. Specifically, Judge Smartt has daily used the Cascade County computer system and internet service paid for by the county to access homosexual pornography during work hours, while in a county office. Judge Smartt's pornographic activity has been chronic, perverse, and extensive. Judge Smartt's pornographic activity has exposed two county employees to highly offensive and obscene material in the workplace and is guilty of sexual harassment because he has created a hostile work environment, pursuant to Cascade County Personnel Policy section 10-2 and Title VII of the Civil Rights Act of 1964. Judge Smartt has violated the law by his actions while in office, which is contrary to Canon 4 of the Canons of Judicial Ethics.

His conduct in improperly using the county's computer and internet access for personal sexual gratification is clearly an impropriety in violation of Canon 4 of the Canons of Judicial Ethics. Judge Smartt's conduct is more than a simple one-time infraction or curiosity—he has consistently spent substantial portions of every working day viewing pornography on county time, using county resources. The extent of his addiction to pornography is shocking. Judge Smartt is visiting up to 50 pornographic websites a day. This conduct clearly casts a pall of impropriety over his court and the bench. Such extensive perversion, paid for by tax dollars, is an offense and affront to the dignity and respect of the bench. The public would be sickened and shocked that a public official and



member of the judiciary spends much of his day at work viewing pornography. This individual is of unfit character to sit on the bench. Such conduct demonstrates Judge Smartt's clear lack of the ethics and morals necessary to perform his job. He has breached the public trust.

Judge Smartt's activities were revealed by the routine functions performed by our female office manager. On Friday, October 13, 2000, Judge Smartt worked in his office from 11:15 a.m. to approximately 3:00 p.m. At approximately 5:20 p.m., the office manager, Susan Stevenson, was shutting down the office for the weekend. As per her usual routine, Sue unplugged the coffee maker, shut off the copier, and shut off the computers assigned to the clerks. During the course of these tasks, Sue mentioned to me that she has had some difficulty with our computer systems automated file backup system. Sue stated that staff members are often leaving programs open on their computers, causing the backup to fail. Sue stated that the problem is most frequently caused by Judge Smartt's terminal. Leaving a terminal on with our calendar program and wordperfect open does not seem to interfere with the backup. These are the only programs necessary to the Judges duties. I stated this to Sue and she said that when she shuts Judge Smartt's computer down, the program that is running is not the calendar or wordperfect. Sue attempted to describe this program to me, but it did not sound like any program that is installed on our system. Sue then stated that she was sure Judge Smartt's computer would be on tonight, and that I could go with her as she shuts it off and determine what the program was.

Sue and I entered Judge Smartt's office. The computer had powered down and the screen was blank, denoting the power save mode. To activate the screen, Sue placed her hand on the mouse and moved it slightly. As she did so, a picture popped up immediately. The picture was a series of 3 pornographic, homosexual photos. (Attached as exhibit A) Sue exclaimed, "Oh my God" and immediately left the room. Her shock at the unexpected display of pornography on an office computer was obvious. I looked at the image and realized that it was a photograph on a pornographic web site. Judge Smartt had left his computer logged on to a pornographic website when he left for the weekend. He had accessed the site during working hours. I printed the screen, then shut his computer off.

I considered the matter overnight. I was concerned that a female staff member had been exposed to this obscene material, as well as myself. I was also concerned that Judge Smartt was doing this on county time, with county resources and equipment.

I determined that this was a significant incident and that some action must be taken. I did not know what should be done at that point. I determined that Judge Smartt's use of the computer was inappropriate and possibly illegal. The conduct also exposes the county to possibly civil liability on a sexual harassment claim for creating a hostile work environment for myself and Susan Stevenson. As Susan Stevenson's direct supervisor, I felt an obligation to investigate and ascertain the degree of his misconduct in our office and on our office equipment. On Sunday, October 15, 2000 I entered the Courthouse in the evening to do my paperwork. Upon completing my work, I entered Judge Smartt's office and looked at his computer. He had used it over the weekend and it was again running. I opened the internet explorer and accessed the history file, which shows all recent websites accessed by that user. The default setting for the history file was 20 days. The history

displays the current week by individual days and then displays the last weeks activities in a weekly block.

The following is a non-inclusive list of the sites displayed in the short term history file on Judge Smartt's computer:

Week of 9/25/00

1-100gay.hardonheaven...	ass-village.porncity.net	bannervip.web1000.com
bears.gay-space.com	coloradobear.cnhost.com	cubsnbears.web1000.com
fantasy-hwy.porncity.net	gayonline-free.fr	gayvill.porncity.net
guygalleries.com	id.adultck.com	manpics2000.com
maleroom.freexxxspace.com	members.fortunecity.com	secure.adultcheck.com
ss10.sexshare.com	www.55megs.com	www.a1-gay-city.com
www.a1-gay-clubs.com	www.a1-sex-xxx.com	www.arrakis.es
www.chrisstone.net	www.cole-tucker.com	www.coppertopmen.com
www.flesh4free.com	www.gaymansex.com	www.gaynudeboys.com
www.gaysight.com	www.gay-space.com	www.gaytogay.com
www.gayville.com	www.gohip.com	www.hotmenlive.com
www.hungmen.net	www.malebox2000.com	www.pridesites.com
www.1.1.nudehost.com	www1.nudehost.com	www3.adultcheck.com

Week of 10/2/00 (Judge Smartt only in office on morning of 10/2/00 and gone the rest of the week for mandatory training)

amateur.sexhound.net	black.sexhound.net	gay.sexhound.net
hairtrigger.masterhost.com	hardcore.sexhound.net	htrigger.hardonheaven.com
www.bigfoot.com	www.flesh4free.com	www.freegaypage.com
www.geocities.com	www.grandefratello.com	www.grandefratello.jumpy.
www.penilefitness.com	www.sexallounge.com	www.traffico.com

Tuesday, October 10, 2000

amateur.sexhound.net	amateurpits.badgays.com	art.adultspace.com
ass-village.porncity.com	beanbrothers.hitmen.com	bearclan.web1000.com
clicks.firstname.com	cotac.com	dir.clubs.yahoo.com
free.orgasm.com	gay.sexhound.net	hairtrigger.majorhost.com
horny.adult-space.com	id.adultcheck.com	lachlan.fsn.net
manpics2000.com	members.theglobe.com	nitrous.exitfuel.com
studs.gay-space.com	www.bearcorral.com	www.bigfoot.com
www.bsb.com	www.bullseye.com	www.buzzlink.com
www.dudetown.com	www.edengay.com	www.flesh4free.com
www.freegaypage.com	www.gaynudeboys.com	www.gaysexsites.com
www.gaytown.com	www.geocities.com	www.gohip.com
www.hairymen.com	www.hitmen.com	www.hungmen.com
www.huskyhunks.com	www.celebrityunderw...	www.menhouse.com
www.mesohorny.com	www.napanet.com	www.penilefitnes.com

www.pridesites.com  
www.vangard.com  
www.men.com

www.theglobe.com  
www.xxxvisions.com  
xdoor.com

www.traffico.com  
www3.adultcheck.com  
xhunk.hitmen.com

Thursday, October 12, 2000

adengine.theglobe.com  
grosbear.free.fr  
manpower.sexpikz.com  
www.gaytaliano.com  
www.hornydaddy.com  
www.redlightvideo.com  
www.xxx500.com

banner1.mr-cash.com  
id.adultcheck.com  
www.gay-banner.com  
www.gaytreffberlin.de  
www.immt.com  
www.sexpikz.com  
www3.adultcheck.com

bears.gay-space.com  
manpics2000.com  
www.gaysexsites.net  
www.gargaud.de  
www.pornbaron.com  
www.simplygay.com  
xxxgay.mr-cash.net

Friday, October 13, 2000

home5.swipnet.se  
www.bullseye.org  
www.hittracker.com  
www.ozemail.com.au  
www.zzap.org

ld.adultcheck.com  
www.flesh4free.com  
www.jdandfriends.com  
www.sexlinx.com

www.bedfellow.com  
www.freshtwinks.com  
www.nocrap.com  
www.theoutlaw.com

Saturday, October 14, 2000

adult2.100free.com  
back-alley.porncity.net  
contact.dutchbear.com  
home.wanadoo.nl  
members.nbc.com  
secure.adultcheck.com  
www.boys4men.com

ars.centurio.com  
beardstud.free-gay.com  
free.erodrom.de  
ld.adultcheck.com  
members.tripod.com  
secure.safesite.com

asp37.free.fr  
bearhunt.web1000.com  
gay.sexhound.net  
manpics2000.com  
members.xoom.com  
texamale.com

Monday, October 16, 2000

id.adultcheck.com  
www.4hornyteen.com  
www.male-erotica.com  
www.teenage-jocks.com

nitrous.exitfuel.com  
www.adultcheck.com  
www.nakedment.to  
www.xxxads.net

nitrous.internetfuel.com  
www.flesh4free.com  
www.new-teens  
www3.adultcheck.com

Tuesday, October 17, 2000

id.adultcheck.com  
nitrous.exitfuel.com  
www.americs.com  
www.geocities.com  
www.meninbondage.nu  
www.xxxtrailertrash.com

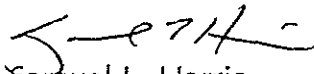
images.flaminglips.net  
www.adultcheck.com  
www.flaminglips.net  
www.lustpuppy.com  
www.nakedmen.to

musclebears-3.free-gay.com  
www.ahhmen.com  
www.gaynakedcity.com  
www.male-erotica.com  
www.studphotos.com

Several of these sites appear to be possible sources of child pornography, such as [www.boys4men.com](http://www.boys4men.com), [www.gaynudeboys.com](http://www.gaynudeboys.com), [www.teenage-jocks.com](http://www.teenage-jocks.com), [www.new-teens.com](http://www.new-teens.com), [www.4hornyteens.com](http://www.4hornyteens.com), and [cubsnbears.web1000.com](http://cubsnbears.web1000.com). This activity demonstrates that Judge Smartt is of unfit character to serve on the bench. On October 19, 2000, Judge Smartt's computer and hard drive were seized by the FBI for investigation.

Rule 9 of the Rules of the Judicial Standards Commission provides that violation of the Canons of Judicial Ethics which brings the judicial office into disrepute or impropriety are grounds for removal. The filth that Judge Smartt is involved in within a public office clearly brings the judicial office into disrepute. Please take action to correct this situation by removing Judge Smartt from office. Cascade County and the State of Montana deserve better from their public officials.

Respectfully yours,



Samuel L. Harris  
Justice of the Peace



EXHIBIT A

CERTIFICATE OF SERVICE

I hereby certify that on the 7<sup>th</sup> day of March, 2002, a true copy of the foregoing was mailed by first-class mail, postage prepaid, addressed as follows:

Hon. Michael S. Smart  
Justice of the Peace  
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